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Non-Confidential Document

January 15, 2002

Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Section 201 Investigation of Imports of Steel:
Comments on Hot-Rolled Steel (including Exclusion), Cold-Rolled Steel, Corrosion-Resistant Steel, Tin Plate, Welded Pipe (Other Than OCTG) and Stainless Steel Wire

On behalf of the Korea Iron & Steel Association (KOSA) and its member companies[1] (Korean Respondents), and pursuant to the notice published October 26, 2001 (66 Fed. Reg. 54321-24), we submit the following comments to the Trade Policy Staff Committee (TPSC) on the President's options under Section 203(a) of the Trade Act of 1930, as amended. Our comments address possible actions regarding the above-captioned products, as well as issues raised in meetings with the TPSC on January 7 and 9, 2002.

We present general comments regarding legacy costs and other issues that apply across all products, before turning to product-specific comments. Exhibit 1 lists factual materials that Korea Respondents submitted to the TPSC, but not to the International Trade Commission (Commission or ITC). Issues raised during the January 7 and 9, 2002 meetings with the TPSC are addressed as appropriate throughout the comments.

Please note, in response to the TPSC's question during the January 7 meeting, that the Government of Korea fully supports Korean Respondents' position.

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1 KOSA's members that produce these products include Pohang Iron & Steel Co., Ltd. (POSCO); Union Steel Manufacturing Co., Ltd.; Dongbu Steel Co., Ltd.; Hysco Steel Co.; SeAH Steel Corporation; Shinho Steel Corporation; Hyundai Hysco; Pohang Coated Steel Co., Ltd.; Dongyang Tinplate Co.; KOS Limited; Kiswel Ltd.; Manho Rope & Wire Ltd.; DSR Corp.; Shine Co., Ltd.; Duck Heung Wire Mfg. Co., Ltd.; and Kowel Special Steel Wire Co., Ltd.

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I. General Comments

A. Legacy Costs

Before turning to Korean Respondents' position concerning remedy, we wish to reiterate the fundamental importance of addressing pension, healthcare and environmental costs to the resolution of the problems facing the U.S. industry. While the Commissioners recognized that they lack the legal authority to recommend action on these issues, they also recognized that these issues are so important to the ability of this industry to consolidate and rationalize that they singled them out for consideration.[2] They were right to do so.

Korean Respondents note in this regard that the Minimill 201 coalition did not submit substantial comments on adjustment. This highlights the fact that this part of the U.S. industry already has adjusted. As the confidential data submitted to the ITC by respondents show, minimills' costs are far less than costs of integrated mills.[3] A recent study by R.W. Crandall, Senior Fellow at the Brookings Institute, confirms respondents' data and argument.[4] Also, the Crandall study demonstrates how intramural competition is damaging parts of the U.S. industry.

We fully support the ITC's view with respect to the need to address legacy costs. Specifically, we recommend as follows:

(1) The Government should establish a fund to contribute to the payment of pension/ health-care/environmental costs (legacy costs) on a company-by-company basis. Approval of Government legacy cost contributions should be conditioned on a capacity reduction plan--Government contributions should be conditioned on approval of company re-structuring and capacity reduction; and

(2) The industry proposal to fund these liabilities out of tariffs collected on imports should be rejected. The United States should not create a linkage whereby foreign mills subsidize U.S. restructuring. It is a bad policy that will be imitated by U.S. trading partners in other areas for other products. Also, government funds are fungible. The issue is not how much duties may or may not be collected--it is what level of funding is needed to solve the problem. The two issues are entirely separate and should remain so.

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2 *Steel*, Inv. No. TA-201-73 (Dec. 2001) (majority) at 374 (Final Report); *accord* Final Report (Commissioner Okun) at 463.

3 Respondents' Joint Prehearing Brief on Injury (Hot-Rolled Steel) (Sept. 10, 2001) at 39-48 and Exhibits 20 and 30; Respondents' Joint Posthearing Brief on Injury (Hot-Rolled Steel) (Sept. 28, 2001) at 22-26 and Exhibit 2.

4 R.W. Crandall, "The Futility of Steel Protection" (submitted to the TPSC by the European Confederation of Iron and Steel Industries (EUROFER)) at 5-9 (demonstrating that the U.S. industry comprises two industries: integrated mills with high costs that are in decline and minimills with low costs that are outcompeting integrated mills and wresting market share from them).

Not all companies need or want help from the Government. For those that do, there should be stringent requirements to insure that the problem of uneconomic domestic capacity[5] is addressed as a pre-condition to government participation in the solution.

B. Costs to the U.S. Economy of Additional Import Relief

Two recent studies highlight the damage that overly aggressive trade remedies would cause to the U.S. economy. We ask the President to consider these studies carefully as he selects the appropriate relief.

First, the Consuming Industries Trade Action Coalition (CITAC) reports that a study prepared by Trade Partnership Worldwide indicates that the Commission's remedy recommendations, if implemented, could eliminate 74,500 U.S. jobs – eight jobs for every steel industry job that allegedly would be saved.[6] Moreover, U.S. consumers would bear the brunt of the remedies. According to the study, consumers would pay an additional $4.0 billion per year for products containing steel.[7]

Second, a study submitted to the TPSC by EUROFER yielded even more dire results. The study,[8] which was authored by Robert W. Crandall, Senior Fellow of the Brookings Institute, concluded as follows:

- for every steel job temporarily gained through trade protection, up to 13 U.S. jobs would be lost;
- the cost to U.S. consumers and producers of saving each steel job would range from $800,000 to $1,000,000; and
- imposing tariffs would increase costs for capital goods industries by 1-3% and could offset any fiscal stimulus.[9]

C. National Security

The comments of many members of the U.S. steel industry claim that further import restrictions are necessary to protect national security.[10] This is not accurate. Last week, the U.S.

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5 *See, e.g.*, Final Report (Commissioner Okun) at 456-57 (concluding that there is U.S. overcapacity that must be addressed).

6 J. Francois and L. Baughman, "Estimated Economic Effects of Proposed Import Relief Remedies for Steel" (Dec. 19, 2001) (attached to January 4, 2002 Submission to the TPSC on behalf of CITAC). *See also* "US steel consumers say import curbs may cost jobs," *American Metal Market* (Dec. 18, 2001).

7 *See id.*

8 R.W. Crandall, "The Futility of Steel Protection" (submitted to the TPSC by EUROFER).

9 *Id.* at 1.

Department of Commerce (DOC) released its report "The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security."[11] The Report summarizes the findings of DOC's investigation pursuant to Section 232 of the Trade Expansion Act of 1962, as amended. DOC concludes that:

> there is no probative evidence that imports of iron ore or semi-finished steel threaten to impair U.S. national security. There is neither evidence showing that the United States is dependent on imports of iron ore or semi-finished steel, nor evidence showing that such imports fundamentally threaten the ability of domestic producers to satisfy national security requirements.[12]

Therefore, as the President considers possible actions, he should accept DOC's conclusions and ignore the scare tactics of the U.S. industry.

II. Hot-Rolled Steel

A. Remedy Recommendation

The President should reject the Commission's tariff recommendation. As demonstrated in Korean Respondents' January 4, 2002 submission to the TPSC, the Commission's recommendation would provide little benefit to the U.S. steel industry and would harm U.S. steel users and consumers.[13] The Commission acknowledges that existing Title VII measures "already provide some degree of protection to the domestic industry."[14] The extent of that protection in the case of hot-rolled steel has been far-reaching. During the period January - June 2001, imports of hot-rolled steel (excluding Canada and captively consumed imports from Korea) made up only 2.64% of U.S. consumption.

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10 *See, e.g.*, January 4, 2002 Submission to TPSC on behalf of U.S. integrated mills (Bethlehem, LTV, National and U.S. Steel) at 42-47.

11 U.S. Department of Commerce, Bureau of Export Administration (October 2001).

12 *Id.* at 1. DOC further concludes that:

(i) U.S. national defense requirements for finished steel are very low and are likely to remain flat for the next five years;

(ii) current U.S. defense demand for iron ore and steel can be satisfied by U.S. production; and

(iii) no U.S. weapons system depends on foreign steel.

13 Please note that the recent study by Gary Hufbauer, Fellow at the Institute for International Economics, rejects the Commission's remedy recommendation and proposes a series of integrated actions, including a five percent tariff and withdrawal of Title VII measures in certain cases. G.C. Hufbauer and B. Goodrich, "Time for a Grand Bargain in Steel?" Institute for International Economics Policy Brief (January 2002).

14 *Steel*, Inv. No. TA-201-73 (Dec. 2001) (Final Report) at 380 n.59.

The impact of Title VII measures on imports of hot-rolled steel is dramatically presented by the graph attached as Exhibit 2.[15] The graph shows that: (i) Title VII measures effectively have excluded unfairly traded imports from the U.S. market; and (ii) fairly traded imports (*e.g.*, imports from Korea to USS-POSCO Industries (UPI)) have not surged, but have remained constant. Also, note that the 1998 surge in "flat products" actually was limited to hot-rolled steel, as the graph highlights. The hot-rolled imports that surged have been virtually eliminated by Title VII actions.

Korean Respondents' recommendation regarding import relief for hot-rolled steel is as follows:

- The President should exclude from any remedy hot-rolled steel imported by U.S. steel companies for re-rolling into other flat products such as cold-rolled steel, galvanized steel and tin plate. This would be consistent with the U.S. government's recognition at the OECD that U.S. companies that rely on imported hot-rolled feedstock, such as UPI, are in the same competitive position as U.S. companies that rely on slab for feedstock, such as California Steel Industries, Oregon Mills and AK Steel.[16]

- If the President determines that an exclusion for hot-rolled steel imported for re-rolling is not workable within the framework of an exclusion, the President should provide a separate tariff-rate quota (TRQ) for hot-rolled feedstock used for re-rolling. The quota element would be based on import levels during 2000 with country-specific allocations based on historical shares during that period.

- At most, the President should impose an anti-surge mechanism in the form of a quantitative restriction or a TRQ based on the base period proposed by Commissioner Okun -- 1996, 1997 and July 2000 - June 2001. The quota should be allocated to historical suppliers and should be liberalized each year to account for increased U.S. consumption to produce value-added products.

B. Exclusion Request

POSCO has asked the President to exclude from any remedy on an MFN basis imports of hot-rolled steel used by U.S. steel makers to produce downstream flat-rolled products and certified as such. In the alternative, POSCO has asked the President to provide a separate TRQ for hot-rolled feedstock used for re-rolling, based on 2000 import levels, with country-specific allocations.

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15 Originally submitted as Exhibit 5 to Respondents' Joint Prehearing Brief on Injury (Hot-Rolled Steel) (Sept. 10, 2001).

16 *See* U.S. Government Report to the OECD, "Follow-up to Special Meeting at High-Level on Steel Issues" (Dec. 17, 2001) at 16-17 (U.S. OECD Steel Report).

The TPSC asked Korean Respondents for additional information regarding both the proposed TRQ and the relevance of Section 203(g) of the Trade Act of 1974 to POSCO's exclusion request. These issues are addressed below.

1. Additional Information on the Proposed TRQ

POSCO's proposed TRQ would apply only to imports of hot-rolled steel used by U.S. companies for re-rolling. It would be based on import levels in 2000. The over-quota duty level should be ten percent. To qualify for the TRQ, the end-user (the U.S. steel company using the hot-rolled steel) would have to certify to the U.S. Customs Service that the steel is destined for use in producing downstream flat-rolled products and will not be sold on the U.S. merchant market.

The TRQ would comply with relevant WTO provisions. First, as recommended by Korean Respondents, it would be applied on an MFN basis. Second, as a separate remedy (just as the Commission recommended for slab), it would not raise other WTO issues. A WTO Member is permitted to tailor safeguard measures to specific products and specific conditions of competition within product markets.[17]

2. Section 203(g) of the Trade Act of 1974

Section 203(g) allows the President to issue regulations governing entry or withdrawal of products from warehouses to carry out an international agreement to limit imports,[18] including "imports into a major geographic area of the United States."[19] This section provides the President with significant flexibility in crafting a remedy that will not harm companies such as UPI that rely on imported hot-rolled steel as feedstock.

For example, UPI is located in Pittsburg, California. Steelscape, the only other U.S. re-roller that relies on imported hot-rolled of which POSCO is aware, also is located in California. Under Section 203(g), the President, as part of an international agreement under Section 203(a)(3)(E), could impose provisions granting UPI the protection it needs without creating a loophole that could be taken advantage of improperly. Such provisions, for example, could preserve UPI's access to its feedstock from POSCO without creating an exclusion that could be used to turn bankrupt integrated mills into re-rollers that would flood the U.S. market. (We note that we think it highly unlikely that a company would base its business strategy on the possible market impact of temporary import relief measures. We note, though, that this solution, and our TRQ proposal for hot-rolled used only for re-rolling, address this concern fully.)

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17 Indeed, Article 5 of the WTO Agreement on Safeguards directs Members to consider certain conditions of competition and "special factors" in allocating quotas.

18 *See* 19 U.S.C. § 2253(a)(3)(E).

19 *See* 19 U.S.C. § 2253(g)(2).

III. Cold-Rolled and Corrosion-Resistant Steel

If the President imposes a remedy, the remedy should be a quota, based on 1998-2000, and liberalized each year. The quota should be tailored to account for the fact that, due to existing Title VII measures, some countries likely would be unable to fill a quota based on their historical levels.

Korean Respondents have two additional comments. The first relates to cold-rolled steel only: the President should create an exclusion for full-hard cold-rolled steel similar to that recommended for hot-rolled steel. As with slab and hot-rolled steel imported by U.S. companies such as UPI, full-hard cold-rolled is used only by U.S. steel companies to produce galvanized steel. It is not sold on the U.S. merchant market and thus has not injured and does not injure the U.S. steel industry. To restrict these imports of full-hard steel would be impermissibly to advantage one sector of the steel industry over another.

Second, with regard to both products, we have proposed a quota based on the three-year, 1998-2000 period rather than the period recommended by Commissioner Okun.[20] We note that Commissioner Okun recommends a different period--1996, 1997 and July 2000-June 2001--because she deems 1998 and 1999 "unrepresentative." While that may be the case for hot-rolled imports, the data flatly contradict this assertion for cold-rolled and corrosion-resistant steel.

The U.S. industry claims that the injury it is currently experiencing is due to the "continuing effects" of volume and prices of imports in 1998, not import levels today.[21] The Commission seems to agree,[22] even though its data show that imports of cold-rolled steel, though high in 1998, did not surge, and imports of corrosion-resistant steel were lower in 1998 than in any other calendar year during the period of investigation except 1996.

The inclusion of 1998 in the base period is in keeping with U.S. law and the WTO Safeguards Agreement, which provide that the last three representative years be used.[23] Because the last three years will normally include at least one year in which imports peaked, there is nothing unrepresentative about 1998 for cold-rolled imports (1998 was not a peak year for corrosion-resistant imports).

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20 1998, 1999 and 2000 are "the last three representative years" for which data are available. *See* 19 U.S.C. § 2253(e)(4).

21 *See, e.g., Steel*, Inv. No. TA-201-73 (Final), Injury Hearing Transcript (Injury Tr.) at 1005 and 1008 (Statement of Mr. Althoff (LTV)); at 1024-25 (Statement of Prof. Fruehan (Carnegie-Mellon Univ.)); at 1029 (Statement of Mr. Kinney (Blaire Strip Steel)).

22 Final Report at 63-65.

23 *See* 19 U.S.C. § 2253(e)(2) ("a quantitative restriction shall permit the importation of a quantity or value of the article which is not less than the average quantity or value of such article entered into the United States in the most recent 3 years...."); Safeguards Agreement, Art. 5.1 ("such measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available....").

Commissioner Okun's refusal to use 1998 as a representative year has no basis whatsoever for either cold-rolled or corrosion-resistant steel.[24] Imports of these products did not surge during 1998. Therefore, even on its face, Commissioner Okun's analysis does not apply to cold-rolled or corrosion-resistant steel. For these products, 1998-2000 is the most recent representative period. Also, in addition to not being distortive, the 1998-2000 period would not require any additional justification before the WTO.

IV. Tin Plate Products

The President should not impose any relief. Three Commissioners found that no relief is necessary. This conclusion is confirmed by an analysis of existing market conditions.

V. Welded Pipe and Tube (Other Than OCTG)

Korean Respondents support the recommendation of the majority of the Commission to impose a TRQ based on 2000 import levels with a reasonable over-quota tariff. This said, the separate recommendations of Commissioners Bragg and Devaney should be rejected, as they reflect an inconsistency between the like product determination, the injury determination and the proposed remedy. The remainder of our comments address issues raised in the domestic industry's comments filed on January 4, 2002.

The Committee on Pipe and Tube Imports (the Committee) ignores the central premise of the ITC majority's remedy recommendation -- the ITC found only *threat* of serious injury and fashioned a remedy to address *only* that threat (*e.g.*, the remedy should *not* apply to imports below import levels in 2000). The Committee, therefore, provides no analytically sound alternative to the ITC majority recommendation. They suggest that the Commission should follow the remedy recommendation of Commissioners Devaney and Bragg, but, as noted in our original submission, there are significant issues concerning how to reconcile their remedy recommendation based on serious injury for a broader like product with the majority findings of only *threat* of serious injury for the like product of other welded pipe alone. The Committee does not address this issue, and it cannot, because the opinions themselves are the problem.

The Committee also suggests that the remedy on pipe and tube must take into account the remedy on flat products. First, Korea does not agree that the remedy on a like product can be justified because other like products are subject to import relief. U.S. law and the WTO Safeguards Agreement specify that import relief must not exceed what is necessary to prevent the threat of injury to the specific like product and allow for adjustment for the industry in question.[25]

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[24] *See* Final Report at 470 (referring to the "surge in imports that occurred in 1998") and 474-75 ("unprecedented surge in flat products").

[25] *See, e.g.*, 19 U.S.C. § 2253(e)(2); Safeguards Agreement, Article 5.1.

There is no legal basis for considering the level of a safeguard remedy on *other* like products:

a. U.S. producers have turned a legitimate consideration *against* relief--*i.e.*, that the costs to the downstream consumers outweigh the benefits to the producers--on its head. The President's statutory authority does not extend to recommending import relief on one product to correct for distortions caused by his own Section 201 remedy on another product.

b. It is indisputable that the flat-rolled industry and the pipe and tube industry were separate industries for purposes of the Commission's injury determination. The level of relief needed to address injury or the threat of injury and promote adjustment is, therefore, unique to each of these industries, as a matter of law.

c. U.S. law permits the consideration of the effects of safeguard remedies on downstream industries in only one form. The President should consider, in the context of the remedy for flat-rolled products, the short- and long-term effects of the recommended action on other industries, including the pipe and tube industry.[26] To the extent the President is persuaded that relief on flat-rolled products would have a detrimental impact on the pipe and tube industry, or other downstream industries, the legally permissible response would be to lessen the severity of the remedy measure on flat-rolled products to prevent that impact--not to increase the severity of the measure on the consuming industry to a point where it exceeds the amount necessary to prevent injury to that industry.

d. The U.S. industry's other claim, that relief only for flat-rolled products will cause product shifting to pipe and tube, is equally unsupported. Even if this could be a legal consideration for imposing remedies on two separate like products, and it is not, the ITC record demonstrates that there is *no* correlation in import levels for flat-rolled and other welded pipe and tube.[27] In other words, imports of pipe and tube do not increase when imports of hot-rolled decrease. Korea is the largest exporter of hot-rolled steel to the United States and a significant exporter of welded pipe and tube. Korea's only exporter of hot-rolled steel, POSCO, is unrelated to any producers of pipe and tube. POSCO's exports of hot-rolled steel to the United States have been flat over the period of investigation (and are not sold in the merchant market, but are used by UPI to produce downstream

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26 *See* 19 U.S.C. § 2252(f)(2)(G)(i).

27 *See, e.g.*, Joint Respondents' Posthearing Brief in Opposition to Import Relief (Category 20) (Oct. 9, 2001) at 16 and Exhibit 8 (comparing imports of hot-rolled and pipe and tube over the period of investigation).

products). Imports of other welded pipe have fluctuated with the market.[28] Safeguards relief would not change these basic facts.

Despite the legal issues discussed above, the Commission majority did recommend that imports of other welded pipe and tube over the level of 2000 imports be subject to the same duties as flat-rolled products. While we disagree with this recommendation, certainly, given that the Commission found only a threat of serious injury, there is no basis whatsoever to apply that duty *before* the level of 2000 imports is met.

VI. Stainless Steel Wire

The President should accept the verdict of three Commissioners and impose no remedy on imports of stainless steel wire. Stainless steel wire is a high-tech downstream product and its U.S. producers do not share the problems that plague producers of the steel mill products that are the focus of this case.

Half of the Commission found that the U.S. stainless wire industry was neither seriously injured nor threatened with serious injury from imports. Moreover, of the three Commissioners who voted in the affirmative, two voted only for threat and one of those two, Chairman Koplan, recommended a tariff of no greater than eight percent.

VII. Conclusion

As demonstrated above, many of the recommendations of the Commission majority are flawed. They would substantially harm U.S. steel consuming industries and would burden U.S. consumers without significantly benefiting the U.S. industry. The U.S. industry already enjoys

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28 *See id.*

substantial import relief in the form of Title VII orders and pending actions. Now, the next step – domestic adjustment in the form of reductions in inefficient capacity and legacy cost relief – must be taken. We respectfully request the President to consider the foregoing comments in deciding what actions to take.

Respectfully submitted,

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EXHIBIT 1

LIST OF DATA PRESENTED TO THE TPSC, BUT NOT TO THE ITC

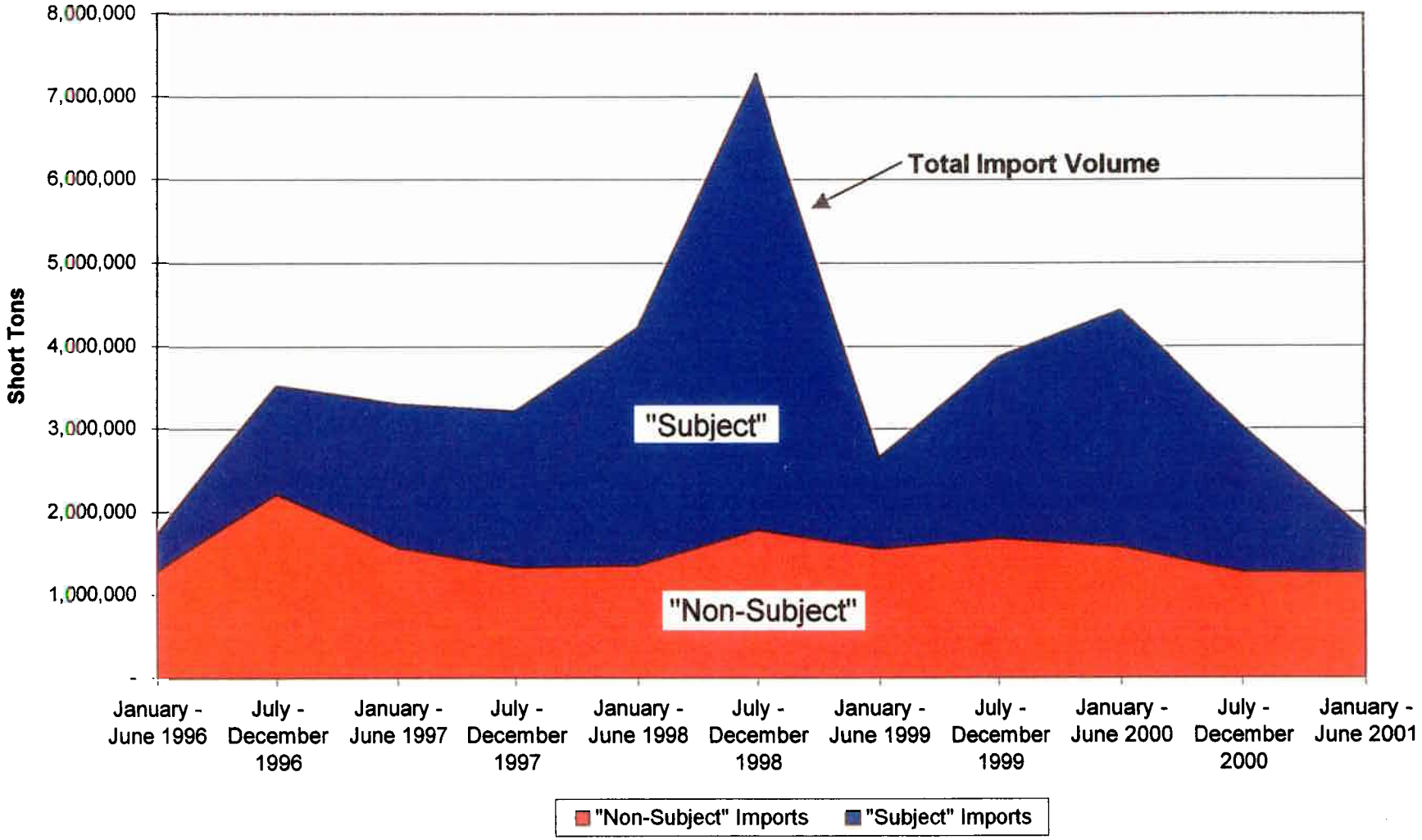
1. Interim 2001 Import Data: Korean Respondents updated the interim 2001 import data to reflect the most recent official DOC figures (January to October 2001).

2. UPI Union Representatives' Letter to Congressman Miller: Korean Respondents attached this letter to their January 4, 2002 submission to the TPSC on hot-rolled steel.

3. Letter from Sec. of Commerce Baldridge and USTR Yeutter to Chairman of USS (Nov. 22, 1985): Korean Respondents distributed this letter at the January 7 and 9, 2002 meetings with the TPSC.

EXHIBIT 2

U.S. Imports of Hot-Rolled Flat Products
"Subject" and "Non-Subject" Countries
1996 to June 2001



Source: U.S. Department of Commerce, Bureau of the Census, Official Import Statistics.